

Immigration Supervision of Foreign Citizens Who Abuse The Limited Stay Permit

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ABSTRACT

This study was conducted to deal with the problems of foreigners committing immigration violations, in the form of misuse of limited stay permits. This research was conducted to explore the problems or obstacles that occur in the field in handling cases of abuse of residence permits, especially regarding the misuse of limited stay permits. The large number of foreigners in Indonesia who use a limited stay permit is one of the main scourges in this study. The study in this study focuses on the immigration control and forms of violations of the abuse of limited residence permits committed by foreign nationals who are in Indonesia. This research study was conducted to find out how effective the supervision carried out by immigration was in handling cases of abuse of limited stay permits. Because this has actually been regulated in the immigration law, namely law number 6 of 2011 concerning immigration.

ABSTRAK

Kajian ini dilakukan guna menangani permasalahan terhadap orang asing yang melakukan pelanggaran keimigrasian, berupa penyalahgunaan izin tinggal terbatas. Penelitian ini dilakukan guna mendalami permasalahan ataupun kendala yang terjadi dilapangan dalam penanganan kasus penyalahgunaan izin tinggal, terutama mengenai penyalahgunaan izin tinggal terbatas. Banyaknya orang asing di Indonesia yang menggunakan izin tinggal terbatas menjadi salah satu momok utama dalam penelitian ini. Kajian pada penelitian ini berfokus pada pengawasan keimigrasiannya dan bentuk tindak pelanggaran penyalahgunaan izin tinggal terbatas yang dilakukan oleh warga negara asing yang sedang berada di Indonesia. Kajian penelitian ini dilakukan guna mengetahui seberapa efektif pengawasan yang dilakukan oleh imigrasi dalam menangani kasus penyalahgunaan izin tinggal terbatas. Karena hal ini sejatinya telah di atur di dalam undang undang keimigrasian yaitu undang undang nomor 6 tahun 2011 tentang keimigrasian.

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I. INTRODUCTION

Indonesia is one of the many countries that has a strategic strategic location, because it can make Indonesia a country that has its own charm in the eyes of the world stage. Even though Indonesia is a developing country, Indonesia is one of the countries that is seen from many things and is in demand by investors and tourists from various circles, both local and foreign. In the industrial era 4.0, of course, Indonesia must advance its country from all aspects. Surely this will invite many

parties who must support the continuity of progress, especially many parties who will intervene for the progress of the nation.

In 2023 the President of the Republic of Indonesia predicts an economic recession will occur in Indonesia, in this case the government will certainly take preventive and innovative actions so that the economic recession will not occur in Indonesia. Of course, this recession will not occur in Indonesia, but this recession is also expected to be felt throughout the world. In preventive measures, the government will develop and develop the potential that exists in Indonesia, by attracting foreign investors in Indonesia and also by attracting foreign tourists who will come to Indonesia. Ensuring this is a big challenge for immigration authorities in carrying out their supervisory duties against foreigners (Simanjuntak & Utomo, 2016).

On the other hand, at this time, Indonesia is also incessantly carrying out various kinds of development. This can be seen from all aspects. This will certainly absorb a lot of local workers and foreign workers. This is also a big challenge for immigration in order to improve the quality of its supervision of all foreigners residing in the territory of Indonesia. Although it can be said that Indonesia has advantages and benefits from its very wide geographical location, this can also be a big obstacle for immigration authorities in carrying out their supervisory duties against every foreigner who is in the territory of the Indonesian state.

Foreign nationals who want to enter the territory of the Indonesian state are required to obtain an entry permit in the form of a visa which will be given by immigration officials to carry out sorting for foreigners who want to enter the territory of the Indonesian state (Sitepu, 2018). Immigration is one of the important aspects owned by the government in sorting for everyone who wants to enter or leave the territory of Indonesia as a form of efforts to maintain state security and sovereignty (Wirasto et al., 2015). The number of actions that violate immigration laws committed by foreigners while in Indonesian territory, especially in terms of abuse of residence permits, is the main factor behind this study. Basically, Immigration will only grant entry permits to foreigners into the Indonesian territory with the provision that the foreigners who will be given permission to enter the Indonesian territory are foreigners who are beneficial to the Indonesian nation. This is done based on the principle of a selective policy.

In this selective policy, which forms the basis for foreigners who can be granted permission to enter Indonesian territory, they are classified into three categories, namely, foreigners who are deemed to have benefits and will not harm the Indonesian state, foreigners who do not have the potential to become a threat to public order and security. state security, as well as foreigners who have no enmity to the community or to the state government (Syah, 2012). On the principle of selective policy, it is also not only applied to foreigners when they want to enter Indonesia but also applies to foreigners who are in Indonesia, including the presence of the foreigner and all forms of activities of the foreigner. This is very dependent on the supervision (Nasution, 2017). So, if a foreigner wants to stay and carry out activities in the territory of Indonesia, the foreigner is required to have a valid residence permit in Indonesia, including a visit stay permit, limited stay permit, permanent residence permit, diplomatic residence permit, and official residence permit. This is regulated and written in Law number 6 of 2011 concerning immigration in article 48 paragraph 1 which says that foreigners who are in Indonesian territory are required to have a residence permit.

In its implementation in the field, there are still many foreign nationals who abuse immigration residence permits for the benefit of a particular group or individual interest (Rahmi, 2021). With the facts that have occurred in the field, of course, follow-up actions must be carried out by monitoring the immigration of foreigners when the foreigners want to enter the country of Indonesia or also carrying out immigration supervision of foreigners who are already in the territory of the Indonesian state. The forms of violations are usually divided into two categories, namely: immigration administration or criminal acts, if the foreigner is found to have violated the immigration administration, the foreigner will be subject to immigration administration actions in the form of charges or deportation, this is regulated in Law No. 6 of 2011, this type of violation is not included

in the judicial process. If the foreigner commits a crime in Indonesia, then the foreigner needs to have a further investigation by the competent authorities and usually can enter the realm of the criminal justice process.

Based on the description above, it can be formulated the problems that will be discussed in this study as follows: First, what are the immigration steps to optimize the control of limited stay permits, considering that there are still many violations found?. Second, What are the immigration preventive measures to prevent abuse of the limited residence permit in this study?.

This study was conducted to determine the supervision of foreigners holding Limited Stay Permits and of course this study aims to determine the penalties and sanctions for cases of abuse of Limited Stay Permits that have been carried out by Foreigners holding Limited Stay Permits.

II. METHOD

This study approach uses descriptive research methods where in this study a lot of in-depth analysis is carried out related to phenomena that occur in the field based on literature studies by conducting research and research sourced from literature, journals and applicable laws.

III. RESULT AND DISCUSSION

In this era of globalization, it is very easy for foreign citizens and Indonesian citizens to enter and exit the territory of a country (Irmania, 2021). With different goals, each individual starts from just going on vacation, working, and until there are also those who want to stay and move to become citizens of the destination country and this is a natural thing to happen in this era of globalization. To enter a country, especially in Indonesia, a residence permit is required to enter and carry out activities for foreign nationals. However, in reality, there are many foreign nationals who misuse the residence permit, such as carrying out activities outside of the provisions of the residence permit given and using the residence permit exceeding the desired time limit.

1. Optimization of limited stay permit supervision

With the many irregularities of residence permits, especially limited stay permits encountered in the field, because in 2023 there will be an economic review. Therefore, there will be many foreign nationals who will enter as foreign investors, businessmen, investors, and workers. It is proper for immigration as the gatekeeper of the state to enforce regulations and select every foreign citizen who wants to enter the territory of the Indonesian state in accordance with applicable laws and regulations.

Limited stay permits are granted to foreign nationals who hold limited stay visas, children born in the territory of Indonesia and one or both of their parents are holders of limited stay visas, foreign nationals who are legally married to Indonesian citizens, etc. regulated in law number 6 of 2011 in article 52.

There are several types of limited stay visas depending on the activities that foreign citizens want to do, namely:

- a. Visa with code C311 : Experts
- b. Visa with code C312 : Foreign Workers
- c. Visa with code C313 : Foreign Investor 1 Year
- d. Visa with code C314 : Foreign Investor 2 Years
- e. Visa with code C315 : Researcher
- f. Visa with code C316 : Student/Student
- g. Visa with code C317 : Family Union
- h. Visa with code C318: Ex-WNI/Repatriation
- i. Visa with code C319 : Senior Traveler

Those are some types of limited stay visas which will be used to get a limited stay permit, but in field practice there are many foreign nationals who abuse their residence permit or pass the time

limit that has been set. So we must enforce immigration laws against foreign nationals who have violated applicable regulations. Law enforcement in immigration has been regulated in applicable laws, in the settlement of immigration crimes there are 2 ways, namely, Immigration Administrative Actions and Projustisia Actions (Sanusi, 2016). Immigration administrative actions are sanctions given by authorized immigration officials (Londow, 2019). There are several main things that must be understood in the event that foreign nationals are subject to Immigration Administrative Actions, including Foreigners who have carried out an activity that is reasonably suspected to be a threat to state order and security, and Foreigners who have violated the applicable laws and regulations. (Hamidi & Christian, 2021).

Immigration Administrative Actions have been regulated in Law Number 6 of 2011 concerning Immigration Article 75 paragraph (2) which explains that:

- a. Listed on the blacklist;
- b. Change, limitation or cancellation of Stay permit;
- c. Prohibited from being in an area of the territory of the state of Indonesia;
- d. Required to reside in the territory of Indonesia;
- e. Provision of expenses; and/or
- f. Expelled or deported from the territory of Indonesia. (Republic of Indonesia, 2011)

In the field application, if the authorized immigration officer meets a foreign citizen who enters the suspicious category, in this case the foreign citizen can be subject to Immigration Administrative Actions in an effort to prevent unexpected immigration crimes. While the Projustisia Action is the opposite of the Immigration Administrative Action, namely the settlement of immigration crimes in court proceedings by the authorized immigration official, namely the Immigration Civil Servant Investigator (PPNS). To optimize the supervision of foreign nationals using a system that starts from observing the activities of foreigners starting from entering the territory of Indonesia until later leaving the territory of Indonesia, and this supervision includes supervision of foreigners who enter or leave the territory of Indonesia, and this supervision can also supervise foreigners while in the territory of Indonesia. Indonesian Territory and supervision of Foreigners who carry out activities in Indonesian Territory (Prabekti, 2019).

Foreign nationals who misuse their residence permit will be subject to punishment in accordance with the article of the applicable law, namely article 122 paragraph a which states that any foreigner who intentionally misuses or carries out activities that are not sustainable with the intent and purpose of granting a permit What remains is given to him. (Republic of Indonesia, 2011). Therefore, it can be seen that law number 6 of 2011 has regulated law enforcement in the misuse of residence permits, especially in handling cases of abuse of limited stay permits, which can be carried out by Immigration Administrative Actions or Projustice Actions. And there are also advantages and disadvantages in Immigration Administrative Actions and Projustisia Actions, Immigration Administrative Actions have a shorter process and can be decided unilaterally without the need for coordination with other agencies, and also do not require too much cost but do not provide too much deterrent effect. large against foreign nationals. While the Projustisia Act has an impact that has a very large deterrent effect, the Projustisia Action requires a longer process and costs more.

2. Types of Misuse of Limited Stay Permits (ITAS)

Foreigners who are and are active in the territory of Indonesia often commit immigration violations which result in the foreigner being punished and subject to sanctions in accordance with immigration law for the acts or violations that the foreigner has committed. Regulations that are violated by foreigners in the form of abuse of this limited stay permit have been regulated in Law Number 6 of 2011 concerning Immigration. Thus, it is certain that foreigners who commit immigration violations, especially in this case related to the abuse of the limited stay permit, will be subject to sanctions and penalties in accordance with those stipulated in the applicable law.

There are several types of violations committed by foreigners related to the misuse of the limited stay permit used when the foreigner is in the territory of Indonesia, among others;

- a) Misuse of Limited Stay Permit (ITAS) in the form of misappropriation of the intended use
When a foreigner wants to enter the territory of Indonesia, of course, the foreigner will apply for a visa in order to enter the territory of Indonesia. This is mandatory because it is included in the requirements for foreigners if they want to enter Indonesian territory. However, in certain cases there are also foreigners who do not need a visa to enter the territory of Indonesia because their country is included in the list of countries included in the granting of a Visit Visa Free (BVK). Even though the foreigner's country of origin is included in the list of countries that can be granted a Visit Visa Free (BVK) to enter Indonesian territory, they are still unable to obtain a Limited Stay Permit (ITAS) upon their initial arrival in Indonesia. Foreigners who enter the territory of Indonesia using a Visit Visa Free can only stay in Indonesia for a maximum period of 30 days and the foreigner's period of stay in Indonesia cannot be extended if the period has expired.

Related to the things discussed in the discussion this time, namely the abuse of limited stay permits carried out by foreigners who are in the territory of the Indonesian state, this is done by foreigners who previously entered Indonesian territory using a Limited Stay Visa and of course these foreigners also have limited stay permit as a permit to be in the territory of Indonesia. This limited stay permit is granted to foreigners for different periods of time according to the purpose of the foreigner while in Indonesia because this is pre-arranged and mapped using the visa index. In the Regulation of the Minister of Law and Human Rights Number 29 of 2021 concerning Visas and Stay Permits in Article 75 it is explained that limited stay permits are given to foreigners with provisions for a maximum period of time with different durations in accordance with the decision of the Director General of Immigration with the condition that later the period of granting the Limited Stay Permit (ITAS) may not exceed the validity period of the foreigner's national passport. (Republic of Indonesia 2013) Due to the decision made, of course, there are provisions for activities carried out by foreigners holding limited stay permits. based on the visa index when at the beginning the foreigner entered the territory of Indonesia and later will be in Indonesia.

However, in reality on the ground, it is often found that foreigners who have a limited stay permit violate their residence permit by carrying out activities that are not in accordance with their limited stay visa. Thus, for foreigners who are found to have committed the offenses described previously, in accordance with what was previously regulated in Law Number 6 of 2011 concerning Immigration of Foreigners, they will be subject to sanctions or imprisonment for a maximum period of 5 years and also criminal penalties with a maximum amount of IDR 500,000,000.00. This criminal penalty is given to the foreigner in order to maintain the security and sovereignty of the country because the foreigner has violated Article 122 of Law No. 6 of 2011 concerning Immigration which states that any foreigner who intentionally abuses or carries out activities that are not in accordance with the provisions of Law No. should be with the intent and purpose in granting the residence permit granted to the foreigner. (Republic of Indonesia, 2011)

- b) Being in the territory of Indonesia past the validity period of the Stay Permit it has (Overstay)
Violations committed by foreigners this time related to their presence in the territory of Indonesia that have passed the validity period of their Stay Permit have often been found in the field. The fact is that in many cases it was found that foreigners who were in Indonesia but did not extend their residence permit so that the foreigner was in Indonesian territory under the condition that he violated the immigration law. In relation to this violation, the foreigner has violated the regulations that have been made in Law Number 6 of 2011 concerning Immigration where this is regulated in particular in article 78 which states that a known foreigner is a foreigner who is the holder of an expired Stay Permit. the validity period and with that the foreigner is still in the Indonesian territory within less than 60 days from the expiration of the validity period of the Stay Permit he has, the foreigner will be subject to a sanction to pay

expenses in accordance with the provisions that have been determined and apply in legislation. If they do not carry out these sanctions, the foreign owner of the Stay Permit whose validity period has expired will be subject to sanctions in the form of Immigration Administrative Actions (TAK) in the form of deportation and deterrence sanctions (Republic of Indonesia 2011). This applies to every foreigner who is in the territory of Indonesia who has a Stay Permit. So, this regulation is not binding on foreigners who hold certain residence permits but is also binding on every foreigner residing in the territory of Indonesia who has any Stay Permits. This is also done by Indonesia in the form of maintaining the security and sovereignty of the country from foreigners who are in the Indonesian Territory.

c) Being in a place that is forbidden to Foreigners

Every Foreigner who has a Stay Permit, either a Visit Stay Permit, a Limited Stay Permit, and without exception a Permanent Stay Permit, is indeed allowed to be in the territory of the Indonesian state because it is in accordance with the provisions given to foreigners. However, in accordance with what has been regulated in the applicable law, namely Law Number 6 of 2011 concerning Immigration in article 48 number (4) which states that the Minister of Law and Human Rights (HAM) has authority over foreigners who have been granted permits. Stay to be in the Indonesian Territory by providing a prohibition for Foreigners to be in certain areas that are prohibited for Foreigners (Republic of Indonesia 2011). If later it is found that there are foreigners who are in certain areas that have been previously prohibited in article 48 number (4), then the foreigners who commit violations because they have violated the applicable rules will be subject to sanctions or criminal penalties in the form of imprisonment with a maximum term of imprisonment. 3 years and/or a fine of Rp.300,000,000.00 (Republic of Indonesia 2011). This is a criminal provision that will be given to foreigners in accordance with the applicable regulations and stated in Law Number 6 of 2011 concerning Immigration in Article 125.

d) Using Fake Stay Permits and Faking Stay Permits

Violations that are often found in the field are carried out by foreigners on the Stay Permit which can also be done by falsifying the Stay Permit. The act of counterfeiting the Stay Permit is carried out by a Foreigner to remain in the Territory of Indonesia. This applies to every Foreigner holding a Visit Stay Permit, Limited Stay Permit, and also Permanent Stay Permit. The action taken by the Foreigner is an act that is illegal and also violates the applicable laws in the country of Indonesia because as it is known that Indonesia has regulations related to the act of counterfeiting Stay Permits. Previously, it was also explained that one of the requirements for foreigners to be in the Indonesian Territory is to have a Stay Permit. However, if it is found that the Foreigner residing in the territory of Indonesia is using a fake Stay Permit and falsifying the Stay Permit, he or she will be subject to criminal law in the form of imprisonment for a maximum term of 5 years and a maximum fine of IDR 500. 000,000.00 (Republic of Indonesia 2011). This has been explained in the applicable law in Indonesia related to immigration violations committed by foreigners where the law that regulates it is Law Number 6 of 2011 concerning Immigration.

3. Preventive measures taken to prevent misuse of Limited Stay Permit (ITAS)

In order to maintain the sovereignty and security of the Indonesian state from threats carried out by foreigners who will enter the territory of Indonesia or who are currently in Indonesia by violating the abuse of the residence permit owned by the foreigner, it is necessary to take preventive actions aimed at preventing people from entering the territory of Indonesia. Foreigners to violate the misuse of their Stay Permit which in this case is focused on the abuse of the Limited Stay Permit.

As for preventive measures or prevention as a form of efforts made in order to maintain the security and sovereignty of the state from violations of the law committed by foreigners residing in the territory of Indonesia in the form of abuse of Limited Stay Permits (ITAS), among others;

a) Carry out administrative supervision of Foreigners upon arrival to Indonesian territory related to Limited Stay Permits (ITAS)

Supervision of the activities of foreigners who are designated as owners of Limited Stay Permits is a responsibility that must be carried out by Indonesian Immigration as a form of implementation in order to maintain the security and sovereignty of the Indonesian state from threats from foreigners who will enter Indonesian territory. One form of supervision that can be done to maintain security from these various threats is to carry out administrative supervision.

Basically, the supervision of foreigners is a whole of a series of activities carried out to control the entry and exit and also the presence of foreigners in the Indonesian Territory who in this condition are in accordance with or not in accordance with the applicable immigration provisions (Dylan, 2020). In Indonesia, supervision of foreigners is basically supervision carried out in administrative matters because it also includes the collection and processing of data related to foreigners entering and leaving the Indonesian territory and besides that there is also supervision carried out with the nature of operational supervision, the implementation of this supervision is carried out by the Immigration of Foreigners in the Indonesian Territory in a coordinated manner (Dylan, 2020).

Therefore, related to the abuse by foreigners of their Limited Stay Permit, the Indonesian Immigration Party must supervise the arrival of foreigners to the Indonesian Territory (Jazuli, 2018). the supervision carried out is in the form of supervision of the Visa it has when it is submitted to enter the territory of Indonesia. The visa that is owned is used as a determinant of foreigners who will carry out certain activities when later in Indonesia. Thus, it is necessary to carry out immigration control related to the Visa because later the Visa will determine the validity period of the Limited Stay Permit owned by Foreigners to carry out certain activities. As previously explained, there are violations related to the misuse of Limited Stay Permits committed by foreigners, therefore the Immigration officer on duty must be able to ensure that foreigners upon arrival to Indonesian territory use the appropriate visa as previously given to apply for a Stay Permit. Limited to being in the Indonesian Territory. If later found a Foreigner who is known to have committed a violation related to the misuse of his Limited Stay Permit, then for the violation of the law, the Foreigner who violates the regulation will be given sanctions and penalties in accordance with applicable regulations.

b) Socialization to foreign guarantors residing in the area as holders of a Limited Stay Permit (ITAS)

One of the other conditions so that foreigners can enter the territory of Indonesia is to have a guarantor which aims to guarantee the existence of foreigners and their activities while in the territory of Indonesia, this is in accordance with what is stated in Law Number 6 of 2011 concerning Immigration in Article 63 number 2. In addition, foreign guarantors also have responsibilities that must be fulfilled in relation to changes in status carried out by foreigners guaranteed by the guarantor. 63 number (2). Reporting of changes in the status of Foreigners can be in the form of changes in civil status, changes in immigration status, and also changes in address. Foreigners guaranteed by the guarantor are also required to fulfill their responsibilities in the context of reporting on changes in their status to the guarantor who has guaranteed it for a long time somewhat in the Territory of Indonesia (Republic of Indonesia 2011).

In order to equalize the views on what must be done to foreigners who will be guaranteed later while in the Indonesian Territory, it is necessary to provide socialization to the guarantors so that there is no occurrence of a violation of regulations committed by foreign nationals, because if there is a violation committed by a foreigner, Foreigners, then the guarantor who guarantees the foreigner directly will be subject to penalties and sanctions as well. The guarantor will be charged a fee and must pay the fee to repatriate and expel the guaranteed foreigner if the

guaranteed foreigner commits a violation related to his presence in the Indonesian Territory with the condition that the validity period of his stay permit has expired or the guaranteed foreigner is subject to sanctions in the form of action. immigration administration in the form of deportation (Republic of Indonesia, 2011). The guarantor can also be given a sanction or penalty if it is known that the guarantor by providing incorrect information in terms of fulfilling the guarantee given previously referred to in the same law in article 63 paragraph (2) and (3) then the form of sanctions given to the guarantor This is in the form of criminal sanctions wherein the guarantor will be given a prison sentence with a maximum prison term of 5 years and a fine with a maximum nominal amount of IDR 500,000,000.00 (Republic of Indonesia, 2011). This socialization has a target so that the guarantor can have the correct view of the applicable regulations related to the presence of foreigners who will be guaranteed while in Indonesia, and increase awareness for guarantors to be able to report all forms of activities and the presence of foreigners who are guaranteed while in Indonesia. because it is the responsibility of the guarantor of the Foreigner.

IV. CONCLUSION

Based on the discussion that has been described, it is concluded that the supervision carried out with a preventive nature is carried out with the aim of preventing violations committed by Foreigners holding Limited Stay Permits by conducting socialization to the guarantor who in this case has a role as the person in charge of the presence of Foreigners and their activities. while in the Indonesian Territory. the importance of socializing to guarantors is aimed at ensuring that guarantors understand their roles and responsibilities as guarantors of foreigners. When they understand their roles and responsibilities, the guarantor can provide education to foreigners who are guaranteed to continue to comply with the regulations and follow these regulations as they should. When the socialization has been carried out and the next fact is that it is found that the Foreigner has committed a violation related to the abuse of the Limited Stay Permit, the next step taken is to carry out persuasive immigration supervision where Immigration directly supervises the Foreigner, and if it is found to have committed a violation, the Person The foreigner is given sanctions and penalties in accordance with applicable laws and regulations. These penalties and sanctions are carried out to create a deterrent effect on perpetrators of law violations, as well as a form of law enforcement to show the world that Indonesia has strong laws in protecting its country from threats posed by foreigners within its territory.

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